

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LOIS ANDERSON)	
Claimant)	
VS.)	
)	
MCDONALD'S)	Docket No. 233,743
Respondent)	
AND)	
)	
FIREMAN'S FUND INSURANCE)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the preliminary hearing Order dated July 10, 1998, entered by Assistant Director Brad E. Avery.

ISSUES

The Assistant Director granted claimant's request for medical benefits. The respondent and its insurance carrier contend the Assistant Director erred because claimant failed to prove that she sustained a work-related injury for which she now needs medical treatment. The only issues on this appeal are:

- (1) Did claimant either injure or aggravate her back while working for the respondent?
- (2) If so, is claimant's present need for medical treatment related to that injury or aggravation?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record compiled to date, the Appeals Board finds:

The preliminary hearing Order should be affirmed.

The year before beginning work for McDonald's, Lois Anderson received medical treatment for a bulging disc in her low back. In her brief to the Appeals Board, Ms.

Anderson acknowledges that she had a significant preexisting back condition when she started working for that company in June 1997.

Ms. Anderson now claims she experienced severe back pain while working for McDonald's on July 19, 1997, after picking up and tossing large bags of trash into a dumpster. Also, she contends that she immediately notified her manager about her back pain and advised her manager that she needed to go home.

This claim hinges on claimant's credibility. The Assistant Director personally observed Ms. Anderson testify and, therefore, was able to assess her demeanor and credibility. The Assistant Director found Ms. Anderson credible and awarded her medical benefits.

In this instance, the Appeals Board gives some deference to the Assistant Director's determination of credibility. Therefore, the Appeals Board also finds that Ms. Anderson has proven she injured her back while working for McDonald's on July 19, 1997. That conclusion is also supported by Dr. Ken Wertzberger's office notes that indicate Ms. Anderson reported a work-related incident to him at her July 25, 1997, office visit. Further, Dr. Michael Geist's medical notes indicate the incident at McDonald's exacerbated Ms. Anderson's chronic back pain.

At this stage of the proceeding and based upon the evidence introduced thus far, Ms. Anderson has established that she has aggravated a preexisting back condition, and that the medical treatment presently needed is related to such aggravation. Therefore, she is entitled to the medical benefits awarded.

As provided by K.S.A. 1997 Supp. 44-534a, the above finding is not binding but subject to modification upon a full hearing on the claim.

WHEREFORE, it is the Appeals Board's finding, decision, and order that the preliminary hearing Order dated July 10, 1998, entered by Assistant Director Brad E. Avery should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

c: Sally G. Kelsey, Lawrence, KS
Steven J. Quinn, Kansas City, MO
Brad E. Avery, Assistant Director
Philip S. Harness, Director